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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 2009-218

13 **RICHARD S. BOGGS,**
14 **a.k.a. RICH BOGGS,**
a.k.a. RICHARD BOGGS,
15 **a.k.a. RICHARD STEVEN BOGGS**
9756 Jutland Court
16 Elk Grove, CA 95757

**ACCUSATION AND
PETITION TO REVOKE
PROBATION**

17 Registered Nurse License No. 504553
Nurse Practitioner Certificate No. 15753

18
19 Respondent.

20 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

21 **PARTIES**

22 1. Complainant brings this Accusation and Petition to Revoke Probation
23 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
24 Department of Consumer Affairs.

25 **Registered Nurse License No. 504553**

26 2. On or about September 23, 1994, the Board issued Registered Nurse
27 License No. 504553 ("license") to Richard S. Boggs, also known as Rich Boggs, Richard Boggs,
28 and Richard Steven Boggs ("Respondent"). The license expired on December 31, 2007.

1 **Nurse Practitioner Certificate No. 15753**

2 3. On or about July 15, 2005, the Board issued Nurse Practitioner Certificate
3 No. 15753 to Respondent. Respondent's nurse practitioner certificate expired on December 31,
4 2007.

5 **Prior Discipline**

6 4. Effective April 8, 2007, pursuant to the Decision After Non-Adoption in
7 Accusation No. 2006-182, the Board of Registered Nursing adopted the Proposed Decision of the
8 Administrative Law Judge dated September 7, 2006, as its final decision and Respondent's
9 Registered Nurse License No. 504553 and Nurse Practitioner Certificate No. 15753 were
10 revoked. A true and correct copy of the Board's Decision After Non-Adoption in Accusation
11 No. 2006-182 is attached hereto, is marked as Exhibit A, and is incorporated herein by this
12 reference. The revocations were stayed and Respondent's Registered Nurse License No. 504553
13 and Nurse Practitioner Certificate No. 15753 were placed on probation for a period of three (3)
14 years with conditions. On July 23, 2008, the Board requested the Attorney General's Office to
15 prepare an Accusation and Petition to Revoke Probation against Respondent.

16 **JURISDICTION**

17 5. Section 2750 of the Business and Professions Code ("Code") provides, in
18 pertinent part, that the Board may discipline any licensee, including a licensee holding a tem-
19 porary or an inactive license, for any reason provided in Article 3 (commencing with Code
20 section 2750) of the Nursing Practice Act.

21 6. Section 2764 of the Code provides, in pertinent part, that the expiration of
22 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
23 against the licensee or to render a decision imposing discipline on the license. Under Code
24 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
25 years after the expiration.

26 7. Code section 118, subdivision (b), provides, in pertinent part, that the
27 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary

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1 action during the period within which the license may be renewed, restored, reissued or
2 reinstated.

3 STATUTORY PROVISIONS

4 8. Code section 2762 states, in pertinent part:

5 In addition to other acts constituting unprofessional conduct within
6 the meaning of this chapter [the Nursing Practice Act], it is unprofes-
7 sional conduct for a person licensed under this chapter to do any of the
8 following:

9 (a) Obtain or possess in violation of law, or prescribe, or except
10 as directed by a licensed physician and surgeon, dentist, or podiatrist
11 administer to himself or herself, or furnish or administer to another,
12 any controlled substance as defined in Division 10 (commencing with
13 Section 11000) of the Health and Safety Code or any dangerous drug
14 or dangerous device as defined in Section 4022.

15 (e) Falsify, or make grossly incorrect, grossly inconsistent, or
16 unintelligible entries in any hospital, patient, or other record
17 pertaining to the substances described in subdivision (a) of this
18 section.

19 9. Code section 4022 states:

20 "Dangerous drug" or "dangerous device" means any drug or
21 device unsafe for self-use in humans or animals, and includes the
22 following:

23 (a) Any drug that bears the legend: "Caution: federal law prohibits
24 dispensing without prescription," "Rx only," or words of similar
25 import.

26 (b) Any device that bears the statement: "Caution: federal law
27 restricts this device to sale by or on the order of a -----," "Rx only,"
28 or words of similar import, the blank to be filled in with the designation
of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be
lawfully dispensed only on prescription or furnished pursuant to Section
4006.

10. Code section 4324, subdivision (a), states:

Every person who signs the name of another, or of a fictitious
person, or falsely makes, alters, forges, utters, publishes, passes, or
attempts to pass, as genuine, any prescription for any drugs is guilty
of forgery and upon conviction thereof shall be punished by
imprisonment in the state prison, or by imprisonment in the county
jail for not more than one year.

11. Health and Safety Code section 11171 states:

No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

12. Health and Safety Code section 11173 states in pertinent part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or other authorized person. . . .

COST RECOVERY

13. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCE AT ISSUE

14. "Percocet," a brand of Oxycodone, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(N).

ACCUSATION

FIRST CAUSE FOR DISCIPLINE

(Prescription of a Controlled Substance)

15. On or about and between April 24, 2006, and August 21, 2006, Respondent was employed as a Nurse Practitioner in the Orthopedic/Spine Department ("OSD") of Kaiser Permanente Hospital ("Kaiser") in Roseville, California.

16. On or about August 11, 2006, Respondent was on duty in the OSD at Kaiser and was seeing an unnamed patient of Dr. D.M.'s for a follow-up visit. During the patient's visit, Respondent determined that a refill of the patient's Percocet prescription would be required. Due to the unavailability of Dr. D.M. to sign the patient's Percocet refill, Respondent forged Dr. D.M.'s name on the prescription.

17. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that on or about August 11, 2006, while on duty as a nurse practitioner in the OSD of Kaiser, he prescribed Percocet for an unnamed patient of Dr. D.M., in violation of Health & Safety Code sections 11171 and 11173, subdivision (a).

SECOND CAUSE FOR DISCIPLINE

(False Entry in Hospital/Patient Records)

18. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (e), in that in or about August 11, 2006, while on duty as a Nurse Practitioner in the OSD of Kaiser, Respondent falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in hospital, patient, or other records pertaining to Percocet, by forging the name of Dr. D.M. on a prescription refill of Percocet, for an unnamed patient belonging to Dr. D.M., as set forth in paragraphs 16 and 17, above, and in violation of Health & Safety Code section 11173, subdivision (c).

PETITION TO REVOKE PROBATION

19. Grounds exist for revoking the probation and reimposing the order of revocation of Respondent's Registered Nurse License No. 504553 and Nurse Practitioner Certificate No. 15753. Condition 12 of the Decision After Non-Adoption states, in pertinent part:

If Respondent violates the conditions of his probation, the board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of respondent's license and certificate.

a. If, during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license and certificate, or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license and/or certificate, the probationary period shall automatically be extended and shall not expire until the accusation and/or petition has been acted upon by the board.

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20. Respondent has violated the Probation Program, as more particularly set forth in the following paragraphs:

FIRST CAUSE TO REVOKE PROBATION

(Failure to Submit Fingerprint Cards and Fees)

21. At all times after the effective date of Respondent's probation, Condition 1, stated:

Respondent shall obey all federal, state, and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

22. Respondent's probation is subject to revocation because he failed to comply with Condition 1. The facts and circumstances regarding this violation are that Respondent failed to submit completed fingerprint cards and fingerprint fees by the due date of July 25, 2007.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Comply with Terms of Probation Program and

Failure to Maintain Active, Current License and Certificate)

23. At all times after the effective date of Respondent's probation, Condition 2 stated, in pertinent part:

Respondent shall fully comply with the conditions of the Probation Program established by the board and cooperate fully with representatives of the board in its monitoring and investigation of respondent's compliance with the board's Probation Program. Respondent shall inform the board in writing within 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension. Upon successful completion of probation respondent's license shall be fully restored.

24. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 2. Respondent failed to comply with the Board's Probation Program in that he did not maintain an active, current license and certificate with the Board by allowing his license and certificate to expire on December 31, 2007, and by failing to comply

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with the Probation Program as more particularly set forth in this paragraph 24 and in paragraphs 22, 26, 28, 30, 32, 34, 36, and 38, herein.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Submit Reports)

25. At all times after the effective date of Respondent's probation, Condition 5, stated:

Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the board or its representatives.

26. Respondent's probation is subject to revocation because he failed to comply with Condition 5. The facts and circumstances regarding this violation are as follows:

- a. Respondent failed to submit or have submitted a narrative report of the required physical health examination which was due July 25, 2007.
- b. Respondent failed to submit or have submitted a narrative report of the required mental health examination which was due July 25, 2007.
- c. Respondent failed to submit Quarterly Reports required by the Board.
- d. Respondent failed to submit reports and evidence of completing the fingerprint process.
- e. Respondent failed to submit reports and evidence of providing a copy of the Board's Decision After Non-Adoption to the Nevada Board of Nursing.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Provide Board Decision to Nevada Board of Nursing)

27. At all times after the effective date of Respondent's probation, Condition 6, stated:

Respondent shall provide a copy of this Decision and Order to the nursing regulatory agency in every state and territory in which he has a registered nurse license or nurse practitioner certificate.

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1 28. Respondent's probation is subject to revocation because he failed to
2 comply with Condition 6. The facts and circumstances regarding this violation are that
3 Respondent failed to provide evidence that he had furnished a copy of the Board's Decision After
4 Non-Adoption to the Nevada Board of Nursing.

5 **FIFTH CAUSE TO REVOKE PROBATION**

6 **(Failure to Practice Nursing as Required)**

7 29. At all times after the effective date of Respondent's probation, Condition
8 7, stated:

9 Respondent, during the period of probation, shall engage in the
10 practice of registered nursing or as a nurse practitioner in California for
11 a minimum of 24 hours per week for six consecutive months or as
12 determined by the board.

13 a. For purposes of compliance with this section, practicing as a
14 registered nurse or nurse practitioner may include, when approved by
15 the board, volunteer work as a registered nurse or nurse practitioner, or
16 work in any non-direct patient care position that requires licensure as a
17 registered nurse or nurse practitioner.

18 b. The board may require that advanced practice nurses engage in
19 advanced practice nursing for a minimum of 24 hours per week for six
20 consecutive months or as determined by the board.

21 c. If respondent has not complied with this condition during the
22 probationary term, and respondent has presented sufficient
23 documentation of his good faith efforts to comply with this condition,
24 and if no other conditions have been violated, the board, in its
25 discretion, may grant an extension of respondent's probation period up
26 to one year without further hearing in order to allow respondent to
27 comply with this condition. During the one-year extension, all original
28 conditions of probation shall apply.

29 30. Respondent's probation is subject to revocation because he failed to
30 comply with Condition 7. The facts and circumstances regarding this violation are that
31 Respondent failed to engage in the practice Registered Nursing for a minimum of 24 hours per
32 week for six consecutive months.

33 **SIXTH CAUSE TO REVOKE PROBATION**

34 **(Failure to Pay Cost Recovery)**

35 31. At all times after the effective date of Respondent's probation, Condition
36 11, stated:

Respondent shall pay the board the costs associated with its investigation and enforcement of the instant action pursuant to Business and Professions Code section 125.3 in the amount of \$8,509.75. Respondent

shall be permitted to pay these costs in a payment plan approved by the board, with payments to be completed no later than three months prior to end of the probation terms.

a. If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to allow compliance with this condition. During the one-year extension, all original conditions of a probation shall apply.

32. Respondent's probation is subject to revocation because he failed to comply with Condition 11. The facts and circumstances regarding this violation are that Respondent failed to pay any portion of the cost recovery in the amount of \$8,509.75.

SEVENTH CAUSE TO REVOKE PROBATION

(Failure to Submit to Physical Health Examination)

33. At all times after the effective date of Respondent's probation, Condition 14, stated, in pertinent part:

Within 45 days of the effective date of this Decision and Order, respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the board before the assessment is performed, submit an assessment of respondent's physical condition and capability to perform the duties of a registered nurse and of a nurse practitioner, including a determination as set forth below in Condition 16. Such assessment shall be submitted in a format acceptable to the board. If medically determined, a recommended treatment program will be instituted and followed by respondent with the physician, nurse practitioner, or physician assistant providing written reports to the board on forms provided by the board.

a. If respondent is determined to be unable to practice safely as a registered nurse or nurse practitioner, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the board and respondent by telephone, and the board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the board is required until the board has notified respondent that a medical determination permits respondent to resume

1. practice. This period of suspension will not apply to the reduction of this
2. probationary time period.

3. b. If respondent fails to have the above assessment submitted to the
4. board within the 45-day requirement, respondent shall immediately cease
5. practice and shall not resume practice until notified by the board. This
6. period of suspension will not apply to the reduction of respondent's
7. probationary time period. The board may waive or postpone this suspen-
8. sion only if significant, documented evidence of mitigation is provided.
9. Such evidence must establish good faith efforts by respondent to obtain
10. the assessment, and a specific date for compliance must be provided.
11. Only one such waiver or extension may be permitted.

12. 34. Respondent's probation is subject to revocation because he failed to
13. comply with Condition 14. The facts and circumstances regarding this violation are that
14. Respondent failed to submit or have submitted the narrative report of the required physical health
15. examination by the due date of July 25, 2007.

16. **EIGHTH CAUSE TO REVOKE PROBATION**

17. **(Failure to Submit to Mental Evaluation)**

18. 35. At all times after the effective date of Respondent's probation,
19. Condition 15, stated, in pertinent part:

20. Respondent shall, within 45 days of the effective date of this
21. Decision and Order, have a mental health examination including
22. psychological testing as appropriate to determine his capability to
23. perform the duties of a registered nurse or nurse practitioner, including
24. a determination, as set forth below in Condition 16. The examination
25. shall be performed by a psychiatrist, psychologist, or other licensed
26. mental health care practitioner approved by the board. The examining
27. mental health care practitioner shall submit a written report of that
28. assessment and recommendations to the board. All costs are the
responsibility of respondent. Recommendations for treatment, therapy,
or counseling made as a result of the mental health examination shall
be instituted and followed by the Respondent.

a. If respondent is determined to be unable to practice safely as a
registered nurse or nurse practitioner, the licensed mental health care
practitioner making this determination shall immediately notify the
board and respondent by telephone, and the board shall request that the
Attorney General's office prepare an accusation or petition to revoke
probation. Respondent shall immediately cease practice and may not
resume practice until notified by the board. During this period of
suspension, respondent shall not engage in any practice for which a
license issued by the board is required, until the board has notified
respondent that a mental health determination permits respondent to
resume practice. This period of suspension will not apply to the
reduction of this probationary time period.

1 b. If respondent fails to have the above assessment submitted to the
2 board within the 45-day requirement, respondent shall immediately
3 cease practice and shall not resume practice until notified by the board.
4 This period of suspension will not apply to the reduction of respon-
5 dent's probationary time period. The board may waive or postpone
6 this suspension only if significant, documented evidence of mitigation
7 is provided. Such evidence must establish good faith efforts by
8 respondent to obtain the assessment, and a specific date for compliance
9 must be provided. Only one such waiver or extension may be
10 permitted.

11 36. Respondent's probation is subject to revocation because he failed to
12 comply with Condition 15. The facts and circumstances regarding this violation are that
13 Respondent failed to submit or have submitted the narrative report of the required mental health
14 examination by the due date of July 25, 2007.

15 **NINTH CAUSE TO REVOKE PROBATION**

16 **(Failure to Participate in An On-Going Counseling Program)**

17 37. At all times after the effective date of Respondent's probation, Condition
18 17, stated, in part:

19 Respondent, at his expense, shall participate in an on-going counseling
20 program until such time as the board releases him from this requirement
21 and only upon the recommendation of the counselor. Written progress
22 reports from the counselor will be required at various intervals.

23 38. Respondent's probation is subject to revocation because he failed to
24 comply with Condition 17. The facts and circumstances regarding this violation are that
25 Respondent failed to submit evidence of his participation and attendance in an on-going
26 counseling program as required by the Board.

27 **PRAYER**

28 **WHEREFORE**, Complainant requests that a hearing be held on the matters
herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking the probation that was granted by the Board of Registered
Nursing in Accusation Case No. 2006-182 and imposing the disciplinary order that was stayed
thereby revoking Registered Nurse License No. 504553 and Nurse Practitioner Certificate No.

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1 15753 issued to Richard S. Boggs, also known as Rich Boggs, Richard Boggs, and Richard
2 Steven Boggs;

3 2. Ordering Richard S. Boggs, also known as Rich Boggs, Richard Boggs,
4 and Richard Steven Boggs, to pay the Board of Registered Nursing the reasonable costs of the
5 investigation and enforcement of this case, pursuant to Code section 125.3; and,

6 3. Taking such other and further action as deemed necessary and proper.
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8 DATED: 3/23/09


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10 RUTH ANN TERRY, M.P.H., R.N.
11 Executive Officer
12 Board of Registered Nursing
13 Department of Consumer Affairs
14 State of California
15 Complainant
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EXHIBIT A
Decision After Non-Adoption in
Accusation No. 2006-182

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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RICHARD S. BOGGS

RN License No. 504553
Nurse Practitioner Certificate No. 15753

Respondent

Case No. 2006-182
OAH No. L2006070332

DECISION AFTER NON-ADOPTION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on August 31, 2006. Complainant was represented Nicholas A. Sanchez, Deputy Attorney General. Respondent was present and represented by Harold Greenberg, Esq.

The Administrative Law Judge issued his Proposed Decision on September 7, 2006. The Board of Registered Nursing ("Board") in its meeting of December 14, 2006, declined to adopt the Proposed Decision and issued a Notice of Nonadoption of Proposed Decision on December 19, 2006. On December 19, 2006 the Board requested hearing transcripts from Kennedy Court Reporters. Transcripts were received on December 21, 2006. On December 29, 2006, the Board issued an Order Fixing Date For Submission of Written Argument on or

1 before January 29, 2007. The respondent and complainant submitted written
2 briefs.

3 The entire record, including the transcript with exhibits, and arguments of both
4 the parties, having been read and considered by the Board, pursuant to
5 Government Code Section 11517, the Board hereby makes the following decision
6 after nonadoption as follows:
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10 ORDER

11 The Board of Registered Nursing hereby adopts the attached Proposed
12 Decision of the Administrative Law Judge dated September 7, 2006 as its final
13 Decision in this matter.
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15 This Decision shall become effective on April 8, 2007.

16 IT IS SO ORDERED this 8th day of March 2007.
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19 LaFrancine Tate

20 LAFRANCINE TATE
21 BOARD OF REGISTERED NURSING
22 STATE OF CALIFORNIA
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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RICHARD S. BOGGS
P.O. Box 581027
Elk Grove, CA 95758

Registered Nurse License No. 504553
Nurse Practitioner Certificate No. 15753,

Respondent.

OAH NO. L2006070332

CASE NO. 2006-182

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at Los Angeles, California, on August 31, 2006.

Deputy Attorney General Nicholas A. Sanchez represented complainant.

Richard S. Boggs (respondent) appeared personally and was represented by Harold Greenberg, Esq.

Oral and documentary evidence was received and the matter was submitted.

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. The Accusation was filed by Ruth Ann Terry, M.P.H., R.N. (complainant), in her official capacity as the Executive Officer, Board of Registered Nursing (the board), Department of Consumer Affairs, State of California.

2. On September 23, 1994, the board issued Registered Nurse License number 504553 to respondent. At all times relevant to the instant proceedings respondent's license was, and currently is, in full force and effect.

3. On July 15, 2005, the board issued Nurse Practitioner Certificate number 15753 to respondent. At all times relevant to the instant proceedings respondent's certificate was, and currently is, in full force and effect.

4. On January 7, 2005, in the San Bernardino County Superior Court, in Case No. FVI04698, respondent was convicted, after entry of his nolo contendere plea, of one count of violating California Penal Code section 242 (Battery), a misdemeanor crime, which, considering the underlying facts, constitutes conviction of a crime which directly relates to the qualifications, functions and duties of a registered nurse and of a nurse practitioner. As a result of the conviction respondent was placed on three years summary probation under certain terms and conditions.

5. The facts and circumstances underlying respondent's conviction are as follows: On a Saturday¹ during July of 1995, respondent played golf with his father. During the golf round respondent and his father consumed some beers. After the golf round respondent and his father returned to the family home. That evening the family ate at a Mexican restaurant. Respondent drank some beer and a margarita during the evening. The family returned home after dinner and respondent's parents went to bed. Respondent and his fourteen year old "half-sister" stayed up and watched a movie on television. The two were sitting on a love-seat. At some point, respondent reached inside his half-sister's blouse and fondled her breasts. Respondent's half-sister told respondent to stop and he did so. Later, respondent apologized to his half-sister for his behavior. Sometime after the incident respondent's half-sister entered counseling and, during the course of treatment she revealed the incident to her counselor. The counselor reported the incident to Child Protective Services and a criminal investigation ensued. During a February 12, 1996 interview with Sheriff's deputies respondent admitted that on the day in question he had played golf with his father and "had quite a bit of alcohol to drink." Respondent also told the deputies that he remembered fondling his half-sister's breasts "on the outside of her clothing."

6. Respondent testified on his own behalf. He denies ever having a drinking problem. Respondent did state that he had anger control problems in the past but he has adequately addressed his anger control problems by attending and completing court ordered anger management classes.

7. Respondent has been employed as a registered nurse since 1994 and has worked in the capacity of a nurse practitioner since 2005. Respondent has no record of patient or employer complaints.

8. Respondent provided five character reference letters attesting to his excellence in nursing and his good character.

¹ No one could remember the specific date.

9. Aside from the 1995 conduct, which resulted in respondent's 2005 conviction, respondent has no record of any other criminal convictions or complaints.

10. The reason(s) it took from the report in 1996 of respondent's conduct until 2005 to gain a conviction against respondent was not established.

11. Respondent pled nolo contendere to the charge of simple battery to avoid the cost and uncertainty of going to trial on more serious charges.

12. The reasonable costs of the investigation and enforcement of the instant case against respondent total \$8,509.75.

LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for discipline of respondent's license and certificate pursuant to California Business and Professions Code sections 2750 and 2761, subdivision (f) because, as set forth in Finding 4, respondent was convicted of a criminal offense substantially related to the qualifications, functions, and duties of a registered nurse and of a nurse practitioner.

2. As set forth in Findings 5, 6, and 10, the role alcohol consumption played in respondent's conviction is unclear, the role respondent's mental state played in respondent's conviction is unclear, and it is unclear why it took until 2005 for the resulting conviction. These hazy areas, in conjunction with the fact that respondent has remained law abiding since the 1995 incident, has had no complaints concerning his professional conduct, and is well regarded by his employers, supervisors and peers, leads to the conclusion that it would not be against the public interests to place respondent on probation under terms and conditions designed to help assess respondent's current mental and alcohol consumption status, and to otherwise protect the public.

3. The reasonable costs of the investigation and enforcement of the instant case against respondent, recoverable by the board pursuant to California Business and Professions Code section 125.3, total \$8,509.75, by reason of factual finding number 12 and legal conclusion numbers 1 and 2.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Registered Nurse License number 504553 and Nurse Practitioner Certificate number 15753, issued to respondent Richard S. Boggs are revoked. However, the

revocations are stayed and respondent is placed on probation for three (3) years on the following terms and conditions²:

1. Respondent shall obey all federal, state, and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

2. Respondent shall fully comply with the conditions of the Probation Program established by the board and cooperate fully with representatives of the board in its monitoring and investigation of respondent's compliance with the board's Probation Program. Respondent shall inform the board in writing within 15 days of any address change and shall at all times maintain an active, current license status with the board, including during any period of suspension. Upon successful completion of probation respondent's license shall be fully restored.

3. Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the board or its designated representatives.

4. Periods of residency or practice as a registered nurse or nurse practitioner outside of California shall not apply toward a reduction of this probation time period. Respondent's probation shall be tolled, if and when he resides outside of California. Respondent shall provide written notice to the board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in California.

5. Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the board or its representatives.

6. Respondent shall provide a copy of this Decision and Order to the nursing regulatory agency in every state and territory in which he has a registered nurse license or nurse practitioner certificate.

² Each condition of probation contained herein is a separate and distinct condition. If any condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each condition of this Decision and Order shall be separately valid and enforceable to the fullest extent permitted by law.

7. Respondent, during the period of probation, shall engage in the practice of registered nursing or as a nurse practitioner in California for a minimum of 24 hours per week for six consecutive months or as determined by the board.

a. For purposes of compliance with this section, practicing as a registered nurse or nurse practitioner may include, when approved by the board, volunteer work as a registered nurse or nurse practitioner, or work in any non-direct patient care position that requires licensure as a registered nurse or nurse practitioner.

b. The board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the board.

c. If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to allow respondent to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

8. Respondent shall obtain prior approval from the board before commencing or continuing any employment, paid or voluntary, as a registered nurse or nurse practitioner. Respondent shall cause to be submitted to the board all performance evaluations and other employment related reports as a registered nurse or nurse practitioner upon request of the board.

a. Respondent shall provide a copy of this Decision and Order to his employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

b. In addition to the above, respondent shall notify the board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment. Respondent shall also notify the board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health related employment with a full explanation of the circumstances surrounding the termination or separation.

9. Respondent shall obtain prior approval from the board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse or nurse practitioner, or any education or training that includes patient care.

a. Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the board, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

b. Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

1. Maximum—The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

2. Moderate—The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

3. Minimum—The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

4. Home Health Care—If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the board, periodic, on-site visits to patients' homes visited by respondent with or without respondent's presence.

10. Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse or nurse practitioner, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

a. Respondent shall not work for a licensed home health agency as a visiting nurse or nurse practitioner unless the registered nursing supervision and other protections for home visits have been approved by the board. Respondent shall not work in any other registered nursing or nurse practitioner occupations where home visits are required.

b. Respondent shall not work in any health care setting as a supervisor of registered nurses. The board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

c. Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a board approved continuing education program.

d. Respondent shall work only on a regularly assigned, identified and predetermined worksite and shall not work in a float capacity.

e. If respondent is working or intends to work in excess of 40 hours per week, the board may request documentation to determine whether there should be restrictions on the hours of work.

11. Respondent shall pay the board the costs associated with its investigation and enforcement of the instant action pursuant to Business and Professions Code section 125.3 in the amount of \$8,509.75. Respondent shall be permitted to pay these costs in a payment plan approved by the board, with payments to be completed no later than three months prior to end of the probation term.

a. If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to allow compliance with this condition. During the one-year extension, all original conditions of probation shall apply.

12. If respondent violates the conditions of his probation, the board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of respondent's license and certificate.

a. If, during the term of probation, an accusation or petition to revoke probation has been filed against respondent's license or certificate, or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license and/or certificate, the probationary period shall automatically be extended and shall not expire until the accusation and/or petition to revoke probation has been acted upon by the board.

13. During respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license(s) and certificate(s) to the board. The board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license(s) and certificate(s) and wall certificates, respondent will no longer be subject to the conditions of probations.

a. Surrender of respondent's license(s) and certificate(s) shall be considered a disciplinary action and shall become a part of respondent's license history with the board. A registered nurse or nurse practitioner whose license(s) or certificate(s) has/have been surrendered may petition the board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license or certificate that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license or certificate surrendered for a mental or physical illness.

14. Within 45 days of the effective date of this Decision and Order, respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the board before the assessment is performed, submit an assessment of respondent's physical condition and capability to perform the duties of a registered nurse and of a nurse practitioner, including a determination as set forth below in Condition 16. Such assessment shall be submitted in a format acceptable to the board. If medically determined, a recommended treatment program will be instituted and followed by respondent with the physician, nurse practitioner, or physician assistant providing written reports to the board on forms provided by the board.

a. If respondent is determined to be unable to practice safely as a registered nurse or nurse practitioner, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the board and respondent by telephone, and the board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the board is required until the board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

b. If respondent fails to have the above assessment submitted to the board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the board. This period of suspension will not apply to the reduction of respondent's probationary time period. The board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

15. Respondent shall, within 45 days of the effective date of this Decision and Order, have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse or nurse practitioner, including a determination as set forth below in Condition 16. The examination shall be performed by a psychiatrist, psychologist, or other licensed mental health care practitioner approved by the board. The examining mental health care practitioner shall submit a written report of that assessment and recommendations to the board. All costs are the responsibility of respondent. Recommendations for treatment, therapy, or counseling made as a result of the mental health examination shall be instituted and followed by respondent.

a. If respondent is determined to be unable to practice safely as a registered nurse or nurse practitioner, the licensed mental health care practitioner making this determination shall immediately notify the board and respondent by telephone, and the board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the board is required, until the board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

b. If respondent fails to have the above assessment submitted to the board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the board. This period of suspension will not apply to the reduction of respondent's probationary time period. The board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

16. If the examiner conducting the physical and/or mental health examination determines that respondent is dependent upon drugs or alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol dependence in remission), that might reasonably affect the safe practice of nursing, respondent must further comply with the following additional terms and conditions of probation:

A. Respondent, at his expense, shall successfully complete, during the probationary period, or shall have successfully completed prior to commencement of probation, a board-approved treatment/rehabilitation program of at least six months. As required, reports shall be submitted by the program on forms provided by the board. If respondent has not completed a board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within a reasonable time

approved by the board; shall be enrolled in a program. If a program is not successfully completed within a reasonable time approved by the board, the board shall consider respondent in violation of probation. Based on Probation Program recommendations, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or the equivalent (e.g. Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health care examiner and/or other ongoing recovery groups.

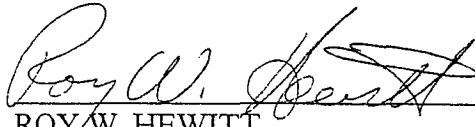
B. Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood-altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so and are part of a documented medical treatment. Respondent shall have sent to the board, in writing and within fourteen (14) days, by the prescribing physician or dentist, a report identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, the date the medication will no longer be required, and the effect on respondent's recovery plan, if any. Respondent shall identify for the board a single physician, nurse practitioner, or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent related to dangerous drugs, controlled substances, or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

C. Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program approved by the board. The length of time and frequency will be subject to board approval. Respondent is responsible for keeping the board informed of his current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the board, as directed. Any confirmed positive findings shall be reported immediately to the board by the program and respondent shall be considered in violation of his probation. In addition, respondent, at any time during the period of probation, shall fully cooperate with the board or any of its representatives, and shall, when requested, submit to such tests and samples as the board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled

substances. If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the board files a petition to revoke probation or an accusation, the board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation.

17. Respondent, at his expense, shall participate in an on-going counseling program until such time as the board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

Dated: September 7, 2006.


ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

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6. Attorneys for Complainant

7. **BEFORE THE**
8. **BOARD OF REGISTERED NURSING**
9. **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10. In the Matter of the Accusation Against:

Case No. 2006-182

11. RICHARD S. BOGGS
PO Box 581027
12. Elk Grove, CA 95758

ACCUSATION

13. Registered Nurse License No. 504553
14. Nurse Practitioner Certificate No. 15753

15. Respondent.

16.
17. Complainant alleges:

18. **PARTIES**

19. 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20. solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21. Department of Consumer Affairs.

22. 2. On or about September 23, 1994, the Board of Registered Nursing issued
23. Registered Nurse License No. 504553 to Richard S. Boggs (Respondent). The Registered Nurse
24. License was in full force and effect at all times relevant to the charges brought herein and will
25. expire on December 31, 2007, unless renewed.

26. 3. On or about July 15, 2005, the Board of Registered Nursing issued Nurse
27. Practitioner Certificate No. 15753 to Richard S. Boggs. The Nurse Practitioner Certificate will
28. expire on December 31, 2007, unless renewed.

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1 || 8. Section 490 of the Code states:

2 "A board may suspend or revoke a license on the ground that the licensee has
3 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
4 duties of the business or profession for which the license was issued. A conviction within the
5 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
6 contendere. Any action which a board is permitted to take following the establishment of a
7 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
8 been affirmed on appeal, or when an order granting probation is made suspending the imposition
9 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
10 Penal Code."

11 9. California Code of Regulations, title 16, section 1444, states, in pertinent
12 part that a conviction or act shall be considered to be substantially related to the qualifications,
13 functions or duties of a registered nurse if to a substantial degree it evidences the present or
14 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
15 safety, or welfare.

16 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
17 request the administrative law judge to direct a licensee found to have committed a violation or
18 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
19 and enforcement of the case.

20 FIRST CAUSE FOR DISCIPLINE

21 (Conviction of a Substantially Related Crime)

11. Respondent is subject to disciplinary action under sections 2761,
subdivision (f), and 490 of the Code, on the grounds of unprofessional conduct, as defined in
California Code of Regulations, title 16, section 1444, in that Respondent was convicted of a
crime substantially related to the qualifications, functions and duties of a registered nurse and/or
nurse practitioner. The circumstances are as follows:

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1 a. On or about January 7, 2005, Respondent was found guilty by the Court on
2 a plea of nolo contendere to one count of violating Penal Code section 242, a misdemeanor
3 (battery), in the Superior Court of California, County of San Bernardino, Case No. FVI04698,
4 entitled *The People of the State of California v. Richard S. Boggs*.

5 b. The circumstances surrounding the conviction are that on ^{one} ~~two separate~~ *Rev*
6 occasions in or about July 1995, Respondent fondled his step-sister, a minor under the age of
7 fourteen (14) years old.

8 SECOND CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

10 12. Respondent is subject to disciplinary action under sections 2750 and 2761,
11 subdivision (a), of the Code on the grounds of unprofessional conduct in that Respondent
12 committed unprofessional acts which directly relate to the qualifications, functions and duties of
13 a registered nurse and/or nurse practitioner, as more fully set forth in paragraph 10, above.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Revoking or suspending Registered Nurse License No. 504553, issued to
18 Richard S. Boggs;

19 2. Revoking or suspending Nurse Practitioner Certificate No. 15753, issued
20 to Richard S. Boggs;

21 3. Ordering Richard S. Boggs to pay the Board of Registered Nursing the
22 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
23 Professions Code section 125.3;

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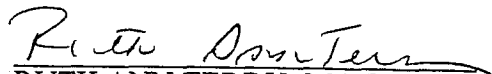
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4. Taking such other and further action as deemed necessary and proper.

DATED: 4/17/06


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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CML (02/09/2006)